

## The Petroleum and Natural Gas Regulatory Board Bill, 2005

*The Ministry of Petroleum & Natural Gas has, so far, regulated the petroleum and natural gas sectors through various policies and notifications. In this regard, the Ministry is also supported by various Acts and Rules developed by our Government from time to time. However, with recent changes and likely growth in the market, the Ministry has proposed to establish a regulatory body to oversee the development and growth of this sector, as a whole. The Ministry, therefore, introduced the Petroleum and Natural Gas Regulatory Board (PNGRB) Bill, 2005, in the Rajya Sabha, on December 21, 2005. The Bill provides for the setting up of the PNGRB, to regulate the downstream petroleum and natural gas sectors.*

### The Bill at a Glance

#### Highlights

- ◆ Constitution of a PNGRB, comprising one chairperson and four members, to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas and to promote competitive markets. [Chapter II]
- ◆ Board to look into downstream issues like refining, processing, storage, transportation, distribution and marketing of petroleum, petroleum products and natural gas. [Section 11]
- ◆ To foster fair trade and competition in the market between entities engaged in such activities and thus protect the interest of consumers. [Section 11(a)]
- ◆ Apart from common-carrier approach, proviso for contract carrier approach also adopted to attract investment. [Section 11(c)]
- ◆ Board to monitor price of notified petroleum, petroleum products and natural gas and take corrective measures to prevent restrictive trade practices and ensure equitable distribution of petroleum products. [Section 11(f)(iii)]
- ◆ Board given the power to register and authorise all concerned entities involved in this sector. [Chapter IV]
- ◆ To establish a strong affiliate code of conduct for governing entities in this business. [Section 21(1)]
- ◆ Constitution of a PNGRB fund to meet administrative expenses like salaries, allowances and pensions payable to the officers and employees of the Board. [Section 39]
- ◆ Appellate Tribunal established under Section 110 of the Electricity Act, 2003, would be considered as the common appellate tribunal for the petroleum, natural gas and electricity sectors. [Section 30]
- ◆ Power given to the Central Government to issue directions and intervene in matters adversely affecting public interest in certain exigencies. [Chapter VIII]
- ◆ Proviso for maintenance of a data bank of information system on activities relating to petroleum, petroleum products and natural gas to enable planning and development. [Section 51]

#### Lowlights

- ◆ Lack of clarity in fixing of transportation rates. [Section 2(zn)]
- ◆ Likely conflict over the jurisdiction, in case of dispute relating to restrictive trade practices. The Bill makes reference to restrictive trade practices, but does not clearly specify the role of PNGRB *vis-a-vis* Competition Commission of India (CCI).
- ◆ The Bill does not address the concern relating to fair access to government negotiated imported raw materials.
- ◆ The Bill lacks clarity on the right of first use, once the Board declares an existing pipeline or a network as a common carrier or a contract carrier. [Section 21]
- ◆ Financial independence constrained by government interference in various ways. [Section 39(3)(i)]

#### Action Points

- Transportation rates should be fixed after being negotiated by the parties, failing which, the regulator should decide.
- The Bill should clearly lay down whether it will be the PNGRB or the CCI that will have jurisdiction in case of disputes relating to restrictive trade practices.
- The Bill should address fair and equitable distribution of government negotiated imported raw materials.
- The Bill needs clarification regarding the manner and the appropriate authority that would determine the requirement of an entity, which enjoys the privilege of right of first use.
- The PNGRB should prepare its budgetary requirements, which should be linked with its work plan for a certain time period. The budget should be approved by the Parliament.

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## Introduction

An independent and accountable regulatory framework is a specific response to the general *mantra* of promoting economic growth. Given the fact that most of the infrastructure services are inherently non-competitive, establishing a transparent and coherent regulatory regime can attract necessary investments to meet the huge demand-supply gap and unlock the economic growth potential. Such an independent regulator is needed to enhance transparency and protect the interests of consumers, particularly in not-so-competitive sectors such as infrastructure services, apart from achieving other important objectives such as promoting competitiveness and efficiency, maintaining quality of services, safety and so on.

of the shift from an administered pricing mechanism (APM) and the involvement of private players in downstream marketing of products.

Currently, there is no transparency in the pricing of petroleum products, due to which both the Government and oil companies continue to reap benefits from distortionary policies and practices, at the cost of consumers.

This current Bill, on the whole, attempts to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas. It provides for the establishment of PNGRB that will regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas. The Bill also proposes to guarantee

Primarily, the Board will be established to foster competition among entities and ensure transparency in the determination of prices of petroleum products. As per the provisions of the Bill, the Board will lay down, by regulations, technical standards and specifications, including safety standards, in activities relating to petroleum, petroleum products and natural gas, including construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector.

Apart from the power to register entities, the Board would authorise the entities to lay, build, operate or expand a common carrier or contract carrier or city or local natural gas distribution network. It is also entrusted with the power to declare pipelines as common carriers or contract carriers and further regulate access to such common carriers or contract carriers or city or natural gas distribution networks.

With respect to the prices of notified petroleum, petroleum products and natural gas, the Board will not only monitor the prices and take corrective measures to prevent restrictive trade practice by entities but will also ensure correct display of information about the maximum retail prices fixed by entities of such petroleum, petroleum products and natural gas, as may be notified by the Central Government.

Besides, PNGRB will secure equitable distribution of petroleum and petroleum products, lay down and enforce retail service obligations for retail outlets and marketing service obligations for entities.

## PNGRB Fund

In order to cover expenses such as salaries and allowances payable to the Chairperson and other members, administrative expenses, including the salaries, allowances and pensions payable to the officers and employees of the Board and all such related expenses incurred or that are to be incurred, the Bill provides for the constitution of a fund to be called the PNGRB Fund.

All the grants, fees, penalties and charges received by the Board shall be credited to the Fund, apart from those received from sources approved by the Central Government. The creation of such a fund aims to make the Regulatory Board, financially independent of the Government, to an extent as otherwise the very purpose of setting up an independent regulator would be undermined.

The Bill expressly empowers the Central Government to constitute a committee to determine the budgetary

### Box 1: A Bill Much Awaited

The Petroleum Regulatory Board Bill was first introduced in the *Lok Sabha* on May 06, 2002, and was then referred to a Group of Ministers, which, in turn, referred it to the Parliamentary Standing Committee on Petroleum and Chemicals for examination on May 17, 2002. The report of the Committee was presented to the *Lok Sabha* on May 08, 2003, that suggested nearly 26 amendments. After incorporating those amendments, the Bill was then renamed as the PNGRB Bill, 2003. However, the Bill lapsed on account of the dissolution of the 13<sup>th</sup> *Lok Sabha*, in terms of Article 107(5) of the Constitution. The Petroleum Ministry reintroduced the Bill in the *Rajya Sabha* on December 21, 2005.

Overall, the need for an empowered, independent regulator is to ensure:

- a level playing field for public and private sectors;
- a clear framework of operating rules, as ambiguity hampers investment;
- economic efficiencies and customer service;
- smooth and fair transition of competition;
- enforcement of an affiliate code; and
- non-discriminatory open access.

The oil and gas sector in India still lags behind in implementation of reforms, as compared to other sectors like telecom, insurance and power, which are being reformed under the watchful eyes of competent and independent regulatory authorities.

Generally, in the oil and gas industry, excessive public interest concerns have resulted in continued control by the Government, despite this sector having a major role to play in driving economic growth. This *de facto status quo* of continuing government control is an unhealthy trend that needs to be reversed. There is an undisputable need to introduce major reforms in these sectors. There is particularly a need for regulation in the petroleum sector, in view

uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country at a fair price. Hence, the Government's proposal to set up a PNGRB is welcome.

This brief critically examines:

- whether the Bill adequately addresses the concerns of all – consumers, entities concerned and the Government; and
- whether some changes in the Bill could better serve the objectives.

### Establishment of PNGRB

A PNGRB is to be established, comprising a Chairperson, a Member with a legal background and three other Members from amongst persons of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs. The Bill provides for the establishment of a head office at New Delhi and regional offices at such other places as the Board thinks appropriate, in the interest of the public and the magnitude of work. The Chairperson and the Members of the Board will be appointed by the Central Government and will hold office for a term of five years, or until they attain the age of 65, whichever is earlier.

## Box 2: Regulators for Both Upstream and Downstream Issues

When the Government decided in favour of more involvement of the private sector in exploration and production, a need was felt to establish an independent regulatory body that could effectively supervise the activities of all the companies – private and public. This desire led to the setting up of the Directorate General of Hydrocarbon (DGH) in April 1993. Since then, the privatisation process of the exploration and production activities has been accelerated.

requirements of the Board. However, the Bill does not mention the constitution of the committee and proposes that the committee would consist of such persons as the Government thinks fit. This very provision could undermine the financial independence of the Board from the Government.

Instead, the Bill should provide for the PNGRB to prepare its own financial requirements based on its work plan for a certain time period (say, next 3 years) and get it approved by the Parliament.

### Registration and Authorisation

The Bill provides for the maintenance of a register, to be called the Petroleum and Natural Gas Register, containing the details of entities registered with or authorised by the Board to undertake any activity requiring registration or authorisation. Every entity desirous of marketing notified petroleum or petroleum product or natural gas, establishing or operating a liquefied natural gas terminal, establishing storage facilities for petroleum, petroleum products or natural gas exceeding specified capacity should register under the proposed legislation. However, an entity involved in such similar activities in the past needs to inform the Board about such activity within six months from the date on which the Board is established.

With respect to authorisation, the Bill provides that no entity shall lay, build, operate or expand any pipeline as a common carrier or contract carrier or lay, build, operate or expand any city or local natural gas distribution network without obtaining authorisation under the proposed legislation. However, an entity already involved in such activities before the constitution of the Board, shall be deemed to have such authorisation, though any change in the purpose or usage shall require authorisation.

### Contract Carrier Approach

The Bill proposes the introduction of contract carrier approach also, rather than just the common carrier for transportation of petroleum, petroleum products and natural gas. The contract carrier approach has been proposed to

Subsequent to the dismantling of the APM on April 01, 2002, the marketing of transportation fuels has been opened for private players in the domestic as well as international sectors. Hence, a similar need for an independent regulator is now felt in the processing and marketing activities, which are the downstream issues. By this proposed Bill, it has been decided that the DGH would regulate the upstream issues and the PNGRB will look into the downstream issues.

be accepted because most countries use contract carrier principle for natural gas pipelines. Moreover, as markets need to make firm, long-term contracts, in order to build capacity, this approach will also help in attracting investments. This is in line with the suggestions proposed by the Gas Industry Group (GIG), a lobby of seven oil and gas companies, comprising Reliance, British Gas, Exxon Mobil, Shell and others.

As a common carrier, a pipeline must accept all oil/gas offered to it for transportation on non-discriminatory open access basis. Where as, under the proposed Bill, a pipeline under a contract carrier is not obligated to accept all oil/gas offered to it for transportation.

The pipeline's tariff may contain provisions for the queuing and access procedures, the minimum duration of contracts, renewal requirements and the bidding mechanism used to secure uninterrupted services. In this way, these pipelines could provide equal and non-discriminatory access for all.

### Code of Conduct

The Bill also provides for the setting up of a comprehensive code of conduct for the purpose of governing entities engaged in storage, transmission, distribution, marketing and sale of natural gas. Such a provision is primarily in the interest of all concerned, as this, to a larger extent, ensures fair conduct and sound business practices among the entities of the downstream sector. The Code would aid to ensure that all potential users are able to access services on an equal, non-discriminatory basis.

### Common Appellate Tribunal

As per the provision of this Bill, the appellate tribunal established under the Electricity Act, 2003, would be the appellate tribunal and a person aggrieved by an order or a decision made by the Board may refer an appeal to the same. Accordingly, the provisions of Sections 120 to 124 of the Electricity Act, 2003, shall be applied *mutatis mutandis*.

In addition, orders passed by this appellate tribunal are executable as a decree of a civil court and it is also

empowered to have all the powers of a civil court. An appeal against an order of this tribunal lies with the Supreme Court. However, no appeal shall lie against the orders made with the consent of parties.

### Powers of the Central Government

Though one of the prime intents of this legislation is to minimise the power of the control of the Government on this sector, certain provisions empower the Central Government to issue directions, in writing, to the Board, from time to time. Such express provisions granting ultimate powers to the Government on certain occasions cannot be rebutted, when it is in the general interest of the entire nation.

For instance, the Bill confers the power on the Central Government to take over the control and management of the facilities and business premises of any entity and retail outlets in public interest, after affording an opportunity of hearing to the affected entity. It also provides for dispensing with the requirement of giving the opportunity of hearing in public interest in cases of emergency and in cases where circumstances do not permit serving of notice for want of sufficient time.

Such wide powers in the hands of the Central Government need to be checked. The process followed by the Government before taking such crucial decisions is important. Provisions should be incorporated to ensure the exercise of such wide powers, after wide consultations with the PNGRB and the public.

### Information Data Bank

Very often, defective planning and lack of proper foresight has resulted in huge expenditure in this sector. A proper development plan could create transparent markets, improve access to end-users and ensure overall development within this sector, so that the sector could find its economic value, ultimately.

Keeping this in mind, the Bill seeks to provide for maintenance of data bank and information by the Board, relating

to activities of entities dealing with petroleum, petroleum products and natural gas, to facilitate informed and realistic planning and development.

### Transportation Rates

The Bill provides for the payment of transportation rates for the use of common carrier to the authorised entity concerned. Section 22 of the legislation empowers the Board to lay down transportation tariffs for common carriers or contract carriers or city or local natural gas distribution network. However, the definition of the transportation rate, as per Section 2 of the Bill, contradicts the above.

As per this definition, "transportation rate", in relation to common carrier or contract carrier or a city or local natural gas distribution network, means the rate for moving each unit of petroleum, petroleum products or natural gas the authorised entity may fix, in accordance with the regulations. Hence, there is a lack of clarity.

Transportation rates should be fixed after negotiations by the parties, failing which, the regulator might decide, rather than being fixed by the authorised entity itself. Hence, appropriate changes need to be made in both the Sections.

### Conflict over Jurisdiction

Usually, provisions relating to restrictive trade practices are covered by the CCI. Though the present Bill addresses restrictive trade practices, it does not clarify whether it will be the PNGRB or the CCI that will have jurisdiction in case of a dispute.

Such a lacuna will create chaos in case of a dispute where each claims jurisdiction over the other. The Bill needs to clearly address this. It could either expressly confer this jurisdictional power upon the PNGRB exclusively, as it is

more skilled, in terms of sector-specific issues, or it needs to clearly mention that such disputes shall be dealt judiciously by the CCI, which is more competent to deal with such issues.

### Fair Access

The oil industry in our country is heavily dependent on import of crude oil. The Government imports nearly 80 to 90 million tonnes of crude oil every year. This makes it necessary to ensure that its access and distribution are more regulated, so that such imported raw materials are fairly accessed. The Bill, however, is silent on this aspect. Hence, there is a need to incorporate provisions in the Bill to address fair and equitable access to such imported raw materials.

### Clarity on Right of First Use

Section 21(1) of the Bill deals with a particular entity's right of first use for own requirement over its own pipeline. However, the Bill is not clear about who will determine the requirement of that particular entity when it exercises such a right.

Determination of such requirements should never be done by the entity itself, rather, in the best interest of all, the regulator should determine the requirement of an entity, after taking into consideration relevant facts, like the capacity of the concerned pipeline/network, the need/demand in the market, availability of petroleum and petroleum products throughout the country, etc.

### Conclusion

Thus, in accordance with the provisions in the Bill, the regulatory mechanism in course of time would facilitate uninterrupted and adequate supply of notified petroleum, petroleum products and natural gas in all parts of the country, including remote areas at fair prices,

provided the concerns addressed are clearly clarified before being enacted. If the Bill addresses these grey areas in their entirety, it would positively facilitate securing fairness, justness and reasonableness.

### Box 3: Why not Go for a Single Regulator?

In a number of countries, the regulator for electricity, petroleum and gas is common, which is logical in certain aspects. Such a single energy regulator is critical to the promotion of investment, diversification of sources of fuel and the need for central co-ordination of the energy industry. For instance, gas can help generate electricity more efficiently and, in many applications, it can replace electricity. Hence, central co-ordination of these sectors will be more productive.

As per the Press Information Bureau Press Release, dated December 15, 2005, in the draft Integrated Energy Policy put for public debate, it has been laid down that a common energy regulator at the level of the Central Government could provide a positive impetus to some of the policy initiatives foreseen under the integrated energy policy.

The Energy Regulator, if constituted, could use the infrastructure already created for the Electricity Regulator. Only thing that needs to be done is to expand that infrastructure to undertake the gas and petroleum pipeline regulation as appropriate. Hence, a move towards a single regulator could also prove to be more cost and time-effective.

Similar views were once expressed by the Deputy Chairman of the Planning Commission, Montek Singh Ahluwalia, at a seminar organised by the The Energy and Resources Institute (TERI) on power sector reforms in New Delhi in September 2005.

### Other Bill Blowups

1. Competition Bill of India, 2001  
*A Right Step in the Right Direction*
2. Communication Convergence Bill, 2001
3. Biological Diversity Bill, 2000  
*A blueprint for the monopolisation of biodiversity or its beneficial use?*
4. The Infant Milk Substitutes... Amendment Bill, 2002  
*More a Formality than an Attempt to Address the Real Concerns?*
5. 98<sup>th</sup> Constitutional Amendment Bill, 2003  
*Seeking to Create a National Judicial Commission*
6. Small Enterprises Development Bill  
*A Step in the Right Director?*
7. Patent (Amendment) Ordinance, 2004
8. The National Rural Employment Guarantee Bill, 2004